

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:

LEO EDWARD WHELAN

xxx-xx-9252

2905 Fondren Drive, Dallas, TX 75205

Debtor

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Case No. 15-41659

Chapter 7

BILL HUDDLESTON

Plaintiff

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v.

Adversary No. 16-4013

LEO EDWARD WHELAN

Defendant

**ORDER REGARDING SERVICE OF ADVERSARY COMPLAINT
UPON DEFENDANT, LEO EDWARD WHELAN**

ON THIS DATE the Court conducted a *sua sponte* review of the file in the above-referenced adversary proceeding. The Court finds that the Complaint in this proceeding was filed on February 5, 2016. The summons to Defendant, Leo Edward Whelan, was issued on February 9, 2016 and delivered to Plaintiff for service. To date, no proof of service has been filed with the Court as required by Fed. R. Civ. P. 4(l), as incorporated into bankruptcy adversary proceedings by Fed. R. Bankr. P. 7004(a). The Court is unable to determine from the file whether service on that particular Defendant has been effected or whether the Plaintiff has merely permitted the summons to expire.

Fed. R. Bankr. P. 7004(e) requires that the summons and complaint be served within seven (7) days of the issuance of the summons. The timeliness of service is essential in bankruptcy proceedings because the time for an answer to be filed under Fed. R. Bankr. P. 7012(a) is measured from the date of the issuance of the summons, rather than from the date that a defendant is served, as is the process under the Federal Rules of Civil Procedure. Since more than seven days have elapsed from the date of the issuance of the summons, the Plaintiff must take steps to have a new summons issued and timely

served upon the above-named Defendant if the summons has not been previously served within the designated time periods. Accordingly,

IT IS THEREFORE ORDERED that the Plaintiff shall, within fourteen (14) days of the entry of this Order, either:

- (1) file a proof of service demonstrating that the complaint and the summons issued in this cause were properly served within seven (7) days of the issuance of such summons on the Defendant, Leo Edward Whelan, pursuant to Federal Rule of Bankruptcy Procedure 7004;
- (2) provide for the issuance of a new summons to Defendant, Leo Edward Whelan, and thereafter effect service on such Defendant in the proper manner and within the time constraints of Fed. R. Bankr. P. 7004(e); or
- (3) otherwise show cause by written response to the Court as to why this adversary proceeding should not be dismissed for want of prosecution.

IT IS FURTHER ORDERED THAT A FAILURE TO COMPLY WITH THE ABOVE DIRECTIVES MAY RESULT IN DISMISSAL OF THIS ADVERSARY PROCEEDING AS AGAINST THE ABOVE-NAMED DEFENDANT WITHOUT FURTHER NOTICE OR HEARING.

Signed on 04/20/2016

A handwritten signature in cursive script, appearing to read "Bill Parker", is written over a horizontal line.

THE HONORABLE BILL PARKER
UNITED STATES BANKRUPTCY JUDGE